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Advanced Fire Technology, LLC and Road Sprinkler Fitters UA Local No. 669, a/w United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO. Case 7-CA-48266

May 9, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on January 24, 2005, the General Counsel issued the complaint on February 4, 2005, against Advanced Fire Technology, LLC, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On March 15, 2005, the General Counsel filed a Motion for Default Judgment with the Board. On March 17, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by February 18, 2005, all the allegations in the complaint could be considered admitted.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business located at 2582 Ramblewood Drive, Kalamazoo, Michigan, has been a construction contractor engaged in the installation, maintenance, and repair of fire protection systems.

During calendar year 2004, the Respondent purchased and received at its facility and at construction sites in the State of Michigan materials and supplies valued in ex-

cess of \$50,000 directly from suppliers located outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Road Sprinkler Fitters UA Local No. 669, a/w United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, John Phillips has been the Respondent's president and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees engaged in the installation, maintenance, and/or repair of automatic fire protection systems employed out of the Respondent's place of business located at 2582 Ramblewood Drive, Kalamazoo, Michigan; but excluding all office clerical employees, designers, delivery personnel, casual employees, and guards, professional employees and supervisors as defined in the Act.

On November 19, 2004, in Case 7-RC-22462, a majority of the unit designated and selected the Union as their exclusive representative for the purpose of collective bargaining with the Respondent.

On November 29, 2004, the Board certified the Union as the exclusive collective-bargaining representative of the unit.

At all times since November 19, 2004, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On about December 14, 2004, the Union, in writing, requested that the Respondent recognize and bargain collectively with it as the exclusive collective-bargaining representative of the unit.

Since about December 14, 2004, the Respondent, by its agent, John Phillips, has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the unit.

CONCLUSION OF LAW

By the conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of the unit employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing and refusing since about December 14, 2004, to bargain with the Union, we shall order the Respondent, on request, to meet and bargain with the Union as the exclusive collective-bargaining representative of the unit and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Advanced Fire Technology, LLC, Kalamazoo, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Road Sprinkler Fitters UA Local No. 669, a/w United Association of Journeyman and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the following unit:

All full-time and regular part-time employees engaged in the installation, maintenance, and/or repair of automatic fire protection systems employed out of the Respondent's place of business located at 2582 Ramblewood Drive, Kalamazoo, Michigan; but excluding all office clerical employees, designers, delivery personnel, casual employees, and guards, professional employees and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment and, if an understanding is reached, embody that understanding in a signed agreement.

(b) Within 14 days after service by the Region, post at its facility in Kalamazoo, Michigan, copies of the at-

tached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 14, 2004.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 9, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT fail and refuse to recognize and bargain collectively and in good faith with Road Sprinkler Fitters UA Local No. 669, a/w United Association of Journeyman and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the following unit:

All full-time and regular part-time employees engaged in the installation, maintenance, and/or repair of automatic fire protection systems employed out of our place of business located at 2582 Ramblewood Drive, Kalamazoo, Michigan; but excluding all office clerical employees, designers, delivery personnel, casual employ-

ees, and guards, professional employees and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment, and put in writing and sign any agreement reached.

ADVANCED FIRE TECHNOLOGY, LLC